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2
3 IN THE UNITED STATES DISTRICT COURT
4
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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7

8 PAUL MITCHELL,

No. C 06-06559 SBA (PR)

9 Petitioner,

ORDER OF DISMISSAL

10 v.

11 CHARLES C. PLUMMER,

12 Respondent.
_____ /

13
14 Petitioner Paul Mitchell, a pretrial detainee at Santa Rita County Jail, has filed a pro se
15 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because there is no state
16 judgment, the Court deems the petition to have been brought pursuant to 28 U.S.C. § 2241, the
17 general habeas statute. See White v. Lambert, 370 F.3d 1002, 1006 (9th Cir. 2004) (listing pretrial
18 detention as example of when § 2241 applies).

19 In an Order dated April 24, 2007, the Court informed him that pre-conviction habeas
20 challenges must first be exhausted in state court and also that they usually are barred by the
21 abstention doctrine. The petition was dismissed with leave to amend to say whether he has
22 exhausted available state judicial remedies, and to specifically allege special circumstances which
23 would warrant federal intervention at this stage of the case.

24 On May 23, 2007, Petitioner filed an amended petition.

25 **DISCUSSION**

26 Principles of comity and federalism require that this court abstain and not entertain
27 Petitioner's pre-conviction habeas challenge unless he shows that: (1) he has exhausted available
28 state judicial remedies, and (2) "special circumstances" warrant federal intervention. See Carden v.
Montana, 626 F.2d 82, 83-84 (9th Cir. 1980). Only in cases of proven harassment or prosecutions

undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other special circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate. See id. at 84 (citing Perez v. Ledesma, 401 U.S. 82, 85 (1971)). In his amended petition, Petitioner makes no such showing of "special circumstances" warranting federal intervention before the trial is held and any appeal is completed. See id. Accordingly, this Court will abstain, and his petition is DISMISSED without prejudice. The alleged problems that Petitioner claims he is enduring are matters that can and should be addressed in the first instance by the trial court, and then by the state appellate courts, before he seeks a federal writ of habeas corpus.

The dismissal of this action is without prejudice to Petitioner filing a new habeas petition, but he should not file a new federal petition for writ of habeas corpus unless he is convicted or committed and then not until his direct appeal and state habeas proceedings have concluded and he has given the state's highest court a fair opportunity to rule on each of his claims.

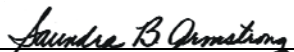
CONCLUSION

The petition for a writ of habeas corpus is DISMISSED without prejudice to refile after state criminal proceedings, including appeal, are completed.¹

The Clerk of the Court shall enter judgment in accordance with this Order, terminate all pending motions as moot, and close the file.

IT IS SO ORDERED.

DATED: 10/18/07


SAUNDRA BROWN ARMSTRONG
United States District Judge

¹ To whatever extent Petitioner also seeks to challenge the conditions of his confinement, he must do so in a separate civil rights complaint under 42 U.S.C. § 1983. See, e.g., Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement).

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PAUL MITCHELL,

Case Number: CV06-06559 SBA

Plaintiff,

CERTIFICATE OF SERVICE

v.

CHARLES C. PLUMMER et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 19, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Paul Mitchell BBC609
Santa Rita County Jail
5325 Broder Blvd.
Dublin, CA 94568-3309

Dated: October 19, 2007

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk